IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.25146 of 1995

Dated: August 29, 2006

Between:

Thammisetti Peda Manga Thayaru, W/o. Pattabhiramaraju,
Aged about 45 years, and others.

… Petitioners

And

The District Collector, East Godavari District,
Kakinada, and others.

… Respondents

Order:

This writ petition has been filed questioning the order dated 21-04-1995, passed by the Deputy Collector (T.W.) Rampachodavaram, East Godavari District, the second respondent herein, in L.T.R.P.No.28/94, evicting the petitioners from the land in question.

2. Heard learned counsel for the petitioners and learned Government Pleader for Social Welfare appearing for the respondents.

3. As stated in the affidavit filed in support of the writ petition, it is the case of the petitioners that they are landless poor, belonging to Periki community, which is notified as B.C. 'B' and are residents of Yellavaram village in East Godavari District. It is stated that the father-in-law of the petitioners, by name, Sri Thammisetti Machara Raju, was an agriculturist and had five sons by name late T. Pedaraju, late T. Pattabhiramaraju, late Surya Prakasa Rao, Sathi Raju and late Ganapathi. The petitioners, three in number, are wives of late T. Pattabhiramaraju, late Surya Prakasa Rao and late Ganapathi. During his lifetime, the father-in-law of the petitioners purchased Ac.2.28 cents of land covered by S.No.15/3, Chenupakalu, hamlet of Gondolu village of Addateegala Taluk, West Godavari District, by Regd. Document No.1160 of 1966 dated 02-06-1966 from Sri Balla Christian Dasu, S/o. Pentayya. The case of the petitioners is that after the death of their father-in-law, the said property has been divided among their husbands in the family partition and each of one of them got Ac.0.76 cents and as such they have been in possession of the said land. It is stated that earlier on the ground that the transfer of the said land in favour of their father-in-law Machara Raju was in contravention of the provisions of the A.P. (Schedule Area Land Transfer) Regulation I of 1959, as amended by Land Transfer Regulation I of 1970, proceedings were initiated by the Deputy Collector (T.W.)

Rampachodavaram, East Godavari District, the second respondent herein, and the same was numbered as L.T.R.P.No.162/81. However, ultimately, the said proceedings were dropped recording a finding that there is no evidence to show that the schedule land was under occupation of tribals at any time after 14-08-1917.

4. Though the said order, dropping the proceedings, has become final, subsequently, in the year 1995, second respondent initiated fresh proceedings against the petitioners on the ground that the transfer of the said land was in contravention of Regulation I of 1959 as amended by Land Transfer Regulation I of 1970, and, order of eviction was passed on 21-04-1995. The case of the petitioners is that as the transfer was not in contravention of either the provisions of The Agency Tracts Interest and Land Transfer Act, 1917 or the provisions of the A.P. (Schedule Area Land Transfer) Regulation I of 1959 as amended by Land Transfer Regulation I of 1970, the order of eviction passed by the second respondent is illegal and arbitrary. It is also their case that there is no finding in the impugned order with regard to any transfer from tribals to non-tribals in contravention of the regulations and in the absence of any such specific finding; the order of eviction cannot be sustained.

5. Respondents have filed counter affidavit wherein they do not dispute earlier proceedings being dropped. However, it is stated that during the course of enquiry, it was revealed that the said land was

purchased by Sri Tammisetti Machara Raju, S/o. Pantam, from one Balla Krishnaiah, S/o. Pentayya, in the year 1966 and prior to the said purchase, the said land was transferred by several enjoyers and it was originally held by scheduled tribes, i.e. Murla Ramayamma and Bada Chinaveeranna and Atchanna by their joint patta No.17. It is stated that originally the aforesaid tribals held the said land and later it was transferred in favour of non-tribals in violation of the regulations; hence the impugned order was passed.

6. Learned counsel for the petitioners, Sri G. Krishna Murthy, contends that though proceedings were initiated with regard to the said land, later, they were dropped after necessary evidence was recorded; hence, it is not open for the respondents to pass an order evicting the petitioners which amounts to virtually reviewing the earlier orders. He submits that there is no evidence on record to show that the transfer of the said land in favour of the vendor of Machara Raju or his predecessor in title was in contravention of the A.P. (Schedule Area Land Transfer) Regulation I of 1959, as amended by Land Transfer Regulation I of 1970. Learned counsel for the petitioners, in support of his contention, relies on a Division Bench judgment of this court reported in **Chintalapati Ramalinga Raju Vs. District Collector, Eluru, W.G. District**[1] and also a judgment of a learned Single Judge of this court in **Pillarisetti Harinath Babu V. Special Deputy Collector (Tribal Welfare), Bhadrachalam**[2].

7. On the other hand, learned Government Pleader for Social Welfare, appearing for the respondents, submits that as against the impugned order, there is a remedy of appeal to the District Collector, who is the Agent to Government, as per the A.P. (Schedule Area Land Transfer) Regulation I of 1959 as amended by Land Transfer Regulation
I of 1970; hence, the petitioner can avail the remedy of appeal. He further submits that as certain material was not considered at earlier point of time, the respondents herein have not noticed the joint patta held by tribals and after it has come to light, the impugned order has been passed.

8. Apropos the above submissions, it is to be seen, the said land has fallen to the share of the husbands of the petitioners in the family partition effected by the petitioners' father-in-law Sri Machara Raju who was holding the said land. Earlier, on the ground that it was transferred in contravention of the regulations, proceedings were initiated in L.T.R.No.162/81. The primary authority, on the earlier occasion, while dropping the proceedings, held that all the sale transactions were held in between non-tribals since 1936 and there is no evidence to show that the petition schedule land was under occupation of tribals at any time after 14-08-1917. Latter proceedings were initiated under the impression that the transfer of the said land was in contravention of the A.P. (Schedule Area Land Transfer) Regulation I of 1959 as amended by Land Transfer Regulation I of

1970. Regulation I of 1959 prohibited transfers from tribals to non-tribals with effect from

01-12-1963 and the said prohibition was extended among

inter se non-tribals with effect from 03-02-1970. It is also relevant to note that in an authoritative pronouncement in the case of **Gaddam Narsa Reddy and others V. Collector, Adilabad District and others**[3],

a Full Bench of this court held that the said regulations are prospective in operation and not retrospective. In this case, from the evidence on record, it is evident that no proceedings were initiated at any time to test whether the transfer was in contravention of the provisions of the Agency Tracts Interest and Land Transfer Act, 1917 or not. In any event, in the earlier order, a definite finding was recorded that all sale transactions were held in between non-tribals since 1936 and there is no evidence to show that the said land was under occupation

of tribals at any time after 14-08-1917, after the enforcement of the Agency Tracts Interest and Land Transfer Act, 1917. Holding so, proceedings were dropped. Moreover, the judgments relied upon by the learned counsel for the petitioners fully support the case of the petitioners. In **Chintalapati Ramalinga Raju's case** (1 supra), it was categorically held that the authority under the Land Transfer Regulations has no power to review the earlier order in the absence of express provision in this regard. A reading of the impugned order would show that the said order has been passed only on the ground

that certain material was not considered on the earlier occasion. It is not a case for review of the earlier orders passed by the primary authority, which have become final. Even in the impugned order, there is no definite finding with regard to transfer of land from tribals to non-tribals, in contravention of regulations, which finding is *sine qua non* for passing an order of eviction under the provisions of A.P. (Schedule Area Land Transfer) Regulation I of 1959 as amended by Land Transfer Regulation I of 1970.

9. Though learned Government Pleader submits that there is remedy of appeal to the District Collector against the impugned order, as much as the earlier order has become final and this court in the aforementioned judgments has categorically held that there is no provision in the regulations to review an order passed under the regulations, the submission of the learned Government Pleader cannot be accepted to drive the petitioners to the appellate authority at this stage. In any event, as no finding has been recorded with regard to transfer of the said land from tribals to non-tribals, in contravention of regulations, the impugned order cannot be sustained.

10. For the foregoing reasons, the impugned order is quashed and the writ petition is allowed. There shall be no order as to costs.

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JUSTICE R. SUBHASH REDDY.

August 29, 2006
MRR

[1] **2000 (2) ALT 155 (D.B.)**

[2] **2006 (4) ALT 247**

[3] **AIR 1982 AP 1 (FB)**